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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**BNP PARIBAS,**

**Plaintiff,**

**-against-**

**KURT ORBAN PARTNERS LLC, ET AL.,**

**Defendants.**  
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**19-cv-9616 (ALC) (SLC)**

**OPINION & ORDER**

**ANDREW L. CARTER, JR., District Judge:**

BNP Paribas (hereinafter, “Plaintiff” or “BNPP”) commenced this lawsuit against Kurt Orban Partners LLC (“KOP”) and Matt Orban (collectively, “Defendants”) in October 2019 alleging claims for breach of contract. ECF No. 1. Defendants filed a motion to dismiss Plaintiff’s complaint for lack of jurisdiction, ECF No. 20, which this Court denied on July 31, 2020, ECF No. 25. The case was subsequently referred to Magistrate Judge Sarah L. Cave for General Pretrial. ECF No. 26. Defendants filed their answer to Plaintiff’s complaint on August 14, 2020. ECF No. 29. On November 9, 2020, Traxys North America LLC filed a motion to intervene, ECF No. 33, which Judge Cave granted on February 2, 2021, ECF No. 53. Prior to that, on November 24, 2020, Attorney Sean Scuderi moved to withdraw as attorney for KOP. ECF No. 39. Judge Cave granted the motion to withdraw the following day, and advised Defendant KOP that it could not appear *pro se* in this action and that new counsel for KOP must enter an appearance by December 25, 2020 or risk default. ECF No. 43. On December 9, 2020, Plaintiff advised Judge Cave that Defendant KOP would not be retaining new counsel to defend it in this matter and sought leave to move for default judgment against KOP. ECF No. 45. Judge

Cave granted Plaintiff leave to request a Clerk's Certificate of Default and to seek entry of default judgment in accordance with the undersigned's Individual Rules of Practice. ECF No. 46. Plaintiff promptly sought the Certificate of Default against KOP, which was issued by the Clerk of Court on December 15, 2020. ECF No. 49. On December 28, 2020, Plaintiff filed a motion for default judgment against KOP. ECF No. 50. On May 21, 2021, this Court referred the motion for default judgment against KOP to Judge Cave. ECF No. 59. On May 27, 2021, the Court so ordered the parties' proposed stipulation entering judgment against Defendant Matt Orban for \$2,500,000. ECF No. 60.<sup>1</sup> On July 14, 2021, Judge Cave issued a Report and Recommendation (hereinafter, "Report") recommending Plaintiff's default motion against KOP be granted and that judgment be entered in favor of Plaintiff and against KOP. ECF No. 62. KOP filed no objections to Judge Cave's Report. For the reasons that follow, the Court adopts Judge Cave's Report in its entirety as the opinion of the Court.

### **STANDARD OF REVIEW**

A district judge may designate a magistrate judge to submit proposed findings of fact and recommendations for the disposition of a case. 28 U.S.C. §§ 636(b)(1)(A)-(C). Following the filing of a report and recommendation, "any party may serve and file written objections to such proposed findings and recommendations" within fourteen (14) days of being served with a copy of the report and recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). A district judge must undertake a *de novo* review of any portion of a magistrate judge's report that has been properly objected to. Fed. R. Civ. P. 72(b)(3). In the absence of objections, however, the Second Circuit has "adopted the rule that failure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties

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<sup>1</sup> Defendant KOP was not a party to this stipulation.

receive clear notice of the consequences of their failure to object.” *Graves v. Corr. Med. Serv.*, 667 F. App’x 18, 19 (2d Cir. 2016) (summary order) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)) (internal quotation marks omitted). In reviewing a report and recommendation free from objections, the district court reviews the report for clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003); *see also Patterson v. Rock*, No. 09-cv-1038, 2012 WL 3245489, at \*1 (S.D.N.Y. Aug. 3, 2012).

### **DISCUSSION**

In the Report, Judge Cave recommended Plaintiff’s motion for default judgment against KOP be granted and that judgment be entered in favor of Plaintiff and against Defendant KOP. *See generally* Report. Judge Cave thoroughly outlined the requirements of 28 U.S.C. § 636(b)(1) and Rule 72(b). Report at 11. Judge Cave stated that KOP had fourteen (14) days from the date of service to file any objections, and that failure to do so would “result in a waiver of objections and will preclude appellate review.” *Id.* KOP filed no objections to the Report. *See* ECF. Thus, KOP has waived any right to further appellate review.

This Court has reviewed the Report for clear error and finds none. Accordingly, Judge Cave’s well-reasoned Report and Recommendation is adopted in its entirety as the opinion of the Court.

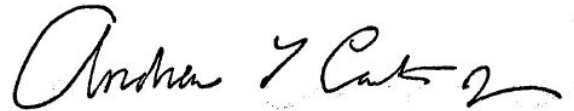
### **CONCLUSION**

For the reasons herein, the Court adopts Judge Cave’s Report and Recommendation in its entirety. Accordingly, Plaintiff’s motion for default judgment is GRANTED. The Clerk of Court is directed to enter judgment in favor of Plaintiff and against Kurt Orban Partners LLC in the amount of (i) \$4,531,713.03 for the unpaid price of the Steel; (ii) a 1% per month late penalty from November 15, 2018 to the date of judgment; and (iii) pre-judgment interest at a rate of 9%

per annum for the period beginning November 15, 2018 through the date of judgment. Plaintiff is hereby ORDERED to submit a proposed judgment reflecting the above amounts (calculated through the date of submission of the proposed judgment) by no later than August 13, 2021 at 12:00 p.m. After judgment has been entered, the Clerk of Court is directed to close this case.

**SO ORDERED.**

**Dated: August 11, 2021**  
**New York, New York**

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written in a cursive style.

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**ANDREW L. CARTER, JR.**  
**United States District Judge**